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May 21, 2012

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Notice- Windy City Cellular, LLC Petition for Waiver of the 84% Reduction in Per-Line Support in WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208.**

Dear Ms. Dortch:

On May 17, 2012, Larry Mayes, Founder, President and CEO of Windy City Cellular, LLC ("WCC") and Andilea Weaver, its Chief Operations Officer, together with WCC's counsel, Monica Desai and Jennifer Richter of Patton Boggs, LLP, had four separate meetings with various FCC staff. These meetings were with Christine D. Kurth (Policy Director & Wireline Counsel to Commissioner McDowell); Louis Peraertz (Legal Advisor for Wireless, International and Public Safety to Commissioner Clyburn) and Angela Kronenberg (Wireline Legal Advisor to Commissioner Clyburn); and with staff in the Wireless Telecommunications Bureau, the Wireline Competition Bureau, and the Office of Strategic Planning.[1]

During the meetings, WCC discussed, and addressed, questions related to the following topics: (1) the urgent need for expedited action; (2) the extraordinary commitment it took to build out telecommunications on Adak Island and the expense and difficulty of serving Adak; (3) why WCC invested in additional cell sites; (4) why neither WCC nor Adak Eagle Enterprises, LLC

[1] Two group meetings were held. The first meeting included Sue McNeil (Special Counsel, Auctions & Spectrum Access Division, Wireless Telecommunications Bureau), Jonathan Chambers (Senior Counselor, Office of Strategic Planning), Pramesh Jobanputra (Industry Economist, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau), Mark Rossetti (Senior Financial Analyst, Auctions & Spectrum Access Division, Wireless Telecommunications Bureau), and Gary Seigel (Public Utility Specialist, Wireline Competition Bureau). The second meeting included Jane Jackson (Associate Chief, Wireless Telecommunications Bureau); Stephen Johnson (Attorney Advisor, Auctions & Spectrum Access Division, Wireless Telecommunications Bureau); Patrick Halley (Legal Advisor, Office of the Wireline Competition Bureau Chief), Soumitra Das (Telecommunications Analyst, Wireline Competition Bureau) and Gary Seigel (Public Utility Specialist, WirelineCompetition Bureau).

("AEE"), its wireline affiliate, filed specific comments during the rulemaking proceeding; (5) why it "took so long" for WCC to file its Petition for Waiver; and (6) WCC's line count fluctuations. Staff also asked WCC to develop and provide a matrix that includes additional detail about the specific costs that support its already-disclosed operating expenses.

I. Expedited Action is Urgently Needed.

In each meeting, WCC discussed the Petition for Waiver it filed on April 3 seeking relief from the Commission's recent implementation of a flash-cut annual cap on per-line support for competitive eligible telecommunications carriers, which resulted in an 84% decline in funding for WCC. The parties emphasized that a delay in relief is tantamount to an order to shut down service: WCC will be forced to shut down all operations in only **five weeks** if the Commission does not grant a waiver quickly. The company will run out of money by July 1. The company will also need to expend dwindling resources to send out notices of potential discontinuance under federal rules to its customers as well as file a discontinuance notice with the FCC.

WCC underscored that there is no opposition to its waiver request[2] and specifically requested that relief be granted this month or in early June in order to conserve resources that would otherwise be spent on discontinuance filings and other actions to wind-down operations, and allow the continuation of critical service that supports livelihoods, public safety, and jobs.

II. How Did AEE and WCC Build Out a Telecommunications Network? Why is it Expensive and Difficult to Serve Adak?

Mr. Mayes, founder of AEE and WCC, discussed the extraordinary effort, commitment and monetary investment required to build out a communications system on one of the most remote and inhospitable locations in the United States of America – Adak Island in the Bering Sea. Mr. Mayes and his team built this system in the face of frequent cyclonic winds with gusts in excess of 100 knots, fog storms, an average accumulated snowfall of 100 inches, earthquakes, a nearby active volcano, rain more than 260 days per year, and tsunamis, and in an area saturated with active bombs and infested with large rats. Against all odds, over the last six years, AEE invested in and built a communications infrastructure supporting wireline, broadband, and wireless voice service, and that now supports a fledgling economy, year-round residents and seasonal workers. Attached is an exhibit describing these extraordinary efforts as told by Mr. Mayes.

WCC also spent significant time going through the financial information it submitted and explained the various reasons it is expensive to provide service to Adak. In one anecdote, WCC discussed how freight charges can often cost more than the actual goods or materials themselves. Recently, a power fluctuation at one of WCC's cell sites resulted in an urgent need for a new

[2] *See* Comments of General Communication, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (dated May 14, 2012).

transformer. WCC managed to find a transformer that was in stock and that would work for a cost of $500. However, the charge to transport the transformer to Adak was $1500. This kind of situation is typical for WCC. High freight costs are unavoidable, particularly since barge service only operates once a year at best.

WCC also explained why costs for staff on Adak are inherently higher than in other areas. WCC and AEE rely on a very limited staff of technicians to perform a wide range and variety of technical support. Technicians must be trained to operate, maintain and fix all of the standard and special purpose equipment required to operate service on Adak, including everything from trenching equipment, snow mobiles, four-wheel-drive vehicles, fiber blowers, and generators.

Finally, WCC discussed how difficult and, at times, unsafe it is to provide service to Adak. In addition to the dangerous conditions WCC faces due to Adak's earthquakes and winter squalls, Adak is literally littered with active bombs dating back to World War II. As a result, WCC must get Navy approval before it is permitted to dig below the surface. Once digging is approved, for safety reasons, WCC may not dig more than 24 inches below the surface.

III. Why Did WCC Invest in Additional Cell Sites?

At the end of 2011, in keeping with its statutory obligation to provide comprehensive service to the entire study area,[3] WCC reinvested $500,000 to build out a new cell site at White Alice, which covers population in the western part of the study area that is not reached from the downtown cell site, and provides redundancy to the rest of the WCC service. Roughly 10% of WCC subscribers live in this remote area, which is within the Adak study area, but is outside the downtown area where GCI (doing business as Alaska Wireless) provides service.[4] If WCC had known there would be a flash-cut reduction in its funding, it either would not have built out the White Alice site or, in view of its statutory obligation to serve the entire study area, WCC would have discussed the expensive buildout (and the impact of the USF reforms) with the FCC and the Regulatory Commission of Alaska before commencing work.

WCC also has now halted its plans to build a third cell site in Clam Lagoon that had been scheduled for 2012. The Clam Lagoon site would have provided improved coverage to the northern part of the study area and network redundancy needed to prevent service interruptions

[3] *See* 47 U.S.C. 214(e)(1)(requiring carriers to offer services that are supported by USF funds "throughout the service area for which the designation is received.").

[4] GCI operates a single cell site downtown at 1900 MHz. WCC operates two cell sites at 800 MHz, one in the downtown area and one in White Alice which covers the more remote population that is within the Adak study area to the west. Given the difference in propagation characteristics of the spectrum, and the locations of operations, WCC provides the most comprehensive service in the Adak area.

in Adak that are caused by severe weather. Construction of that site would have cost $1 million. However, in the wake of the *USF/ICC Transformation Order*[5] and its devastating financial impact on WCC, construction was stopped. Despite this, just last month WCC received a letter from the Wireless Telecommunications Bureau ("Bureau") granting an eight-month extension of the construction requirement for its proposed Clam Lagoon cell site.[6] The Bureau based its decision on the "unique challenges" faced by Alaska licensees when deploying wireless service, the fact that WCC "has been diligent in its efforts to bring wireless service to this remote part of Alaska," and the fact that "an extension of time is in the public interest." However, unless a waiver is granted quickly, and at a level more than just the bare minimum to cover operating expenses, the public will be deprived of the expanded, more reliable service that the Clam Lagoon cell site would have provided.

As WCC has tried to make clear in its filings and meetings, WCC is a company that re-invests in its community. It neither has shareholders, nor pays dividends. Grounded in its conviction that residents of Adak should not be treated like second class citizens, WCC believes it is important to provide robust service that is as equivalent as possible to the service provided to consumers in the lower 48 states.

IV. Why did WCC or AEE Not File Specific Comments in Rulemaking Proceeding?

WCC and Adak Eagle Enterprises, LLC ("AEE"), its wireline affiliate, are small companies constrained by limited resources. In order to provide comprehensive and reliable service to the Adak community, AEE and WCC expended their funds on infrastructure, staff, and customer service. Although the companies were generally aware of the Universal Service Fund reform efforts being considered by the Commission, they believed that the Commission understood the unique challenges and high costs faced by remote Alaskan carriers. Neither company ever thought that the Commission would contemplate imposing funding cuts that would destroy essential communications services upon which the fragile Adak community depends. Neither expected that they could be impacted to such an extreme measure that they would have no choice but to discontinue all service. WCC in particular never expected a flash-cut in funding that would reduce its revenues in such an extreme way and that would be effective a mere few weeks after the *USF/ICC Transformation Order* was released.

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[5] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*").

[6] *See* Letter from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Larry D. Mayes, President and Chief Executive Officer, Windy City Cellular, LLC dated April 4, 2012.

V. Why Did it "Take So Long" For WCC to File a Waiver Request?

WCC was asked why it did not file its waiver request until April 3, even though the *USF/ICC Transformation Order* was released on November 18, 2011. WCC explained that it had no indication that there would be a problem with its support level until February 2012 when it received its USF settlement for the preceding month - reflecting an 84% cut in funding. Even then, WCC believed the reduction must have been a mistake. Neither the Commission nor USAC provided any advance warning to WCC that it would be one of only two companies to be impacted so severely under the *USF/ICC Transformation Order*. Also, neither the Alaska Telephone Association nor any of WCC's consultants had recognized that the Commission's reforms would have such a detrimental effect specifically on WCC.

Throughout the reforms in the *USF/ICC Transformation Order*, the Commission appeared to be sensitive to the unique needs of remote Alaska, and WCC believed that its funding would be decreased gradually through phased-in reforms beginning in July 2012. The company did not understand that the *USF/ICC Transformation Order* contained a rule that would immediately slash the company's support just weeks after release of the *Order*.

Unable to identify which new rule would have caused the decrease in support, WCC consulted USAC. After further analysis of the new rules, the USAC staff pointed to footnote 880 in the *USF/ICC Transformation Order*, which specifically applies the reduction in funding to carriers serving remote areas of Alaska. Upon realizing in mid-February that the sudden 84% decrease in support was not a mistake that would be rectified by March, WCC searched for staff at the Commission who could provide guidance and soon thereafter began the process of putting together the long list of information required to support a waiver request under Section G of the order. The process of preparing and filing a waiver petition, however, required a significant investment of time and resource. WCC had to divert significant resources to meet the numerous petition requirements set forth in Section G of the *USF/ICC Transformation Order*.[7] WCC had to hire legal counsel in Washington, D.C., familiar with FCC process; compile and analyze a tremendous amount of financial and technical information with the assistance of outside consultants, engineers, accountants and technicians; and develop legal arguments to support its waiver request. All of this was accomplished while WCC also attempted to maintain operations in the face of an 84% revenue reduction, reconfigured its contracts with outside vendors to try to reduce costs (which resulted in elimination of its back-up backhaul service), laid off staff, and prepared other regulatory filings for the Alaska PUC that were due in that same timeframe.

[7] *See USF/ICC Transformation Order*, ¶¶ 539-544.

Because any delay or "stopped clock" in the Commission's review of WCC's Petition would be financially disastrous for the company, WCC was afraid to submit a filing without full and complete information. Given the Commission's Section G petition requirements and the amount of work required to prepare the filing, it took WCC all of March to assemble and finalize the Petition. WCC was able to file its Petition on April 3. The Commission did not place the Petition on Public Notice until almost ten days later – on April 12. Today, WCC has over $150,000 in bills related to filing and supporting its Petition for relief, and only $100,000 in the bank. Unless the Wireless Telecommunications Bureau acts quickly, there is no question that WCC will shut down service in roughly 35 days, stranding consumers, businesses, and critical public safety operations.

VI. Line Count Fluctuation.

In order to try to understand the WCC business case, Bureau staff asked WCC to compile information that shows its wireless "line" counts on a monthly basis. WCC shared that the line counts can fluctuate materially in the course of a quarter, and that only the line counts at the end of the quarter are reported to USAC. For example, in 2010, WCC's monthly line counts varied from 59-127 lines. In 2011, the line counts varied from 90-110 monthly lines. In 2012, line counts have ranged from 101-198 lines. Promotions run by WCC's competition and seasonal workers can both have a big impact on WCC's line counts. Icicle Seafoods, for example, has 25-30 permanent employees, but 180-190 seasonal workers.

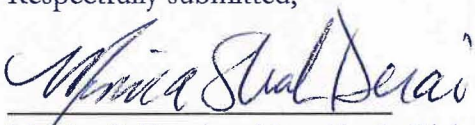
VII. Matrix of Operational Costs.

In order to further understand WCC's cost of doing business on Adak, Bureau staff also spent time with WCC walking through each operational expense item that WCC disclosed in the exhibits to its Petition. As a follow-up, Bureau staff asked WCC to develop and provide a matrix that includes additional detail about the costs that underlay its already-disclosed operating expenses. WCC is preparing that information and will provide it in a confidential filing under the protective order in this docket.

In summary, as discussed in the meeting, the flash-cut 84% reduction in funding that took effect in January 2012, has already impaired WCC from providing reliable service to the remote island of Adak. Service to Adak is inherently expensive and difficult. In keeping with its statutory mandate to serve the entire study area, WCC used its scarce resources earlier this year to build out a new cell site to cover 10% of the population that couldn't be served from the downtown site. Once WCC realized that its enormous slash in funding was not a USAC mistake, it started making operational changes to cut costs and it worked diligently to assemble all of the detailed

information required by the *USF/ICC Transformation Order* to submit a waiver request as quickly as possible. Without an expeditious waiver, the results will be catastrophic to both WCC and to the Adak community.

Respectfully submitted,



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ADAK TELEPHONE UTILITY STORY

As told by Larry Mayes, Founder, President and CEO

Adak Island is part of the Aleutian Chain of islands located 1,300 miles southwest of Anchorage Alaska in the Bering Sea. It is the most southern community in Alaska. Adak lies in the subpolar oceanic climate zone, characterized by persistently overcast skies, high winds, and frequent cyclonic storms. Winter squalls produce wind gusts in excess of 100 knots (120 mph; 190 km/h). During the summer, extensive fog forms over the Bering Sea and the North Pacific. Average temperatures range from 20 to 60 °F (-7 to 16 °C), but wind chill factors can be severe. Total precipitation is 64 inches (1,600 mm) annually, with an average accumulated snowfall of 100 inches (2,500 mm). With 263 rainy days per year, Adak has the second highest rainy day number of any inhabited locality in the United States after the city of Hilo in Hawaii.

Adak Island was the home of over 6,000 Navy personnel before it was selected for closure in 1996. The Aleut Corporation (TAC), which is an Alaska Native corporation, traded other land they owned with the government to get Adak Island and the transfer took place March 17, 2004. The idea of TAC was to rebuild the community that was once a military base into a fishing community. I had just retired from the US Military (Army) in December 1996 and in February 1997 was contacted by a representative of one of TAC's subsidiary companies to work on Adak Island as a Telecommunications Technician. This contract was to maintain the following telecommunication systems: telephone, pager, VHF/UHF radio, cable TV, and computer. I worked with six other telecommunications personnel to maintain the telecommunication systems on Adak. As the land transfer was just about to become a reality, the other personnel started looking for other employment because the Navy support funding of the land transfer was coming to an end. I was the only one left there to take care of the telecommunications systems on Adak.

The reason I stayed was because of my belief in what TAC wanted to do with the old Navy military base. Adak Reuse Corporation (ARC), which was one of the TAC subsidiary companies that took over the operation of Adak, planned to turn the Navy Base into a community once the Navy presence was gone. Adak could be used by the fishing industry as a refueling location and fish processing plant, and by the airlines as an emergency landing location with 7,600 and 7,800 foot runways.

The telephone system (Central Office and Outside Plant) that the Navy had left in place was antiquated and needed replacement badly. Because I was the only technician on Adak, I was regularly called back to the island to fix problems. I would fly out of Adak to visit my family for two weeks but often had to return on the next flight to Adak because of problems with the telephone switch and outside plant. I was always on the phone with Digital Voice Company (the switch manufacturer) to fix problems and get the system back up and running correctly. The Digital Voice switch was a military PBX equivalent without the required features of a civilian switch. A temporary switch was leased from Digital Voice when the older switch could not function further. Amazingly, the switch manufacturer was able to supply the replacement switch and we were able to install it within a two month period. It was a simple switch that functioned but did not have all the nuances of the modern switches.

The outside plant's twisted pair copper wiring was a huge mess. I had to put my tone on a pair of wires at one demarcation point and go from that demarcation point to another one to find a good pair that would go back to the switch to be used for telephone service. I would do this until a good pair was found. I was only one person to maintain those communications systems while working alone and no matter what the weather was like or what was needed to do to complete the installation or fix a situation, I did it as well as I could.

What you find normal in the lower 48 to fix a circuit and install new service is not what you will find in a remote rural area like Adak. Adak is infested with rodents (Norwegian Rat) that we regularly encountered when we needed to crawl under customer houses or in a building crawl space to install or fix a cable.

The weather is not your friend on Adak, and it is not consistent. The island has a saying: "If you don't like the weather, just wait five minutes and it will change." So when you have good weather, you better use it to your advantage. When the grass is wet and the sun is shining, that creates a lot of small flying bugs that get into your eyes and mouth when you are trying to work.

TAC and ARC approached two or three other Alaskan telephone providers to take over the telephone system because neither TAC nor ARC was capable of running a telephone company, and they wanted to create other businesses on Adak Island besides TAC companies. Two of the companies visited Adak to assess the system, and I gave them tours and provided them with maps of the entire system. While both companies were significantly experienced in rural operations, both telecommunications companies declined to serve Adak Island as a telephone company.

After TAC or ARC could not get a telephone company that was already in business to serve Adak Island, they approached me and asked if I would like to run the telephone system on Adak Island. I agreed to take over the telephone system on Adak Island since I had been working the system for many years alone and knew the system intimately.

Once I had the telephone system, I set up an office in my home and I had my family help with invoices and paperwork. Before long, I needed someone to help with accounting so I hired Mrs. Andilea Weaver to do the accounting. We both were new to this regulated industry. I informed Mrs. Weaver that we were just starting out and we had a very small customer base. Also, I informed her there was going to be a lot of work and that I could only pay her when I could – and that was not regularly. I used my retirement funds, family savings, small loans from banks, and maxed out my credit cards to get started.

I worked all day and spent many hours at night into the next morning trying to draft the application for the certificate of public convenience and necessity (CPCN) to provide local exchange service in Alaska for Adak Eagle Enterprises, LLC (AEE) d/b/a Adak telephone Utility (ATU). The Regulatory Commission of Alaska (RCA) staff knew me pretty well because I had called and visited their office many times to learn how to fill out the application. Once I thought I had completed the application for CPCN, I turned the application into the RCA for review. After the RCA had reviewed the CPCN application, the staff recommended that I hire a consultant to help out with the CPCN application.

In 2000, ARC had hired Kenneth Trout (KET, Inc.) to submit an application to RCA for a new certificate of public convenience for the Adak Study area. Since it had been a government base, the Navy didn't have a certificate from RCA. RCA issued ARC a Temporary Operation Certificate. I contacted KET, Inc. and asked Kenneth if he would help with the drafting and filing of the CPCN application for AEE. Kenneth came in and helped with the application and then he recommended Dean Thomson, a lawyer with the law firm of Kemppel, Huffman & Ellis, P.C., who is experienced with filing and regulatory issues.

There was much work to be done, and there were limited funds to this, but both firms came to fulfill our need to set up a telephone company. While we were going through this procedure, they suggested that we apply for a Rural Utility Service (RUS) loan to rebuild the telephone system infrastructure on Adak. RUS was contacted, and we were put in touch with Doug Devore and Mike Riley of Mid-State Consultants, who helped to prepare the documentation to apply for an RUS loan. Wes Lannen, our field representative from RUS, also assisted us in completing the RUS loan application. Reeve Engineering had taken pictures of the facilities and completed an on-site review, and had determined that the entire plant should be replaced.

Jim Rowe and the Alaska Telephone Association (ATA) members were great mentors in letting ATU join the association and taking a young inexperienced company under their wing.

In 2005, while talking with Doug Devore about needing some help on Adak, he stated that he might know of a technician who would be willing to work on Adak. So Doug had Michael Eickoff call me and we worked out a deal for him to work on Adak with me.

We submitted a loan package to RUS for over six (6) million dollars to replace the entire telephone system on Adak. RUS based the approval contingent upon the FCC'S granting of waivers into the National Exchange Carrier Association, Inc. (NECA pools) and inclusion in the Universal Service Administrative Pools (USF). (*See* Schedule I of RUS loan.) After the FCC orders granting those items, the processing of the loan continued and RUS approved our loan package request for over 6 million dollars. With these funds RUS funds, AEE was able to rebuild the communication system with modern technology (Class 5 Switch, FTTH, DSL, and ONT). The first draw was finally available in July 2006. Without RUS approving the AEE loan request, the Adak community would still be having problems with the old military switch, and corroded twisted pair outside plant wiring.

RUS, RCA, FCC, consulting firms, lawyers, ATA and their members have been a blessing to a small community like Adak.

Building the system and coordinating logistics was a challenge because of the need to coordinate materials and equipment arriving from the lower 48 states into Alaska, and then having to further coordinate shipping to Adak on a Navy barge that assisted in the initial process. There were no direct barges from the lower 48 to Adak. Bad weather occasionally kept the contractors and equipment from arriving on time. Airline scheduling had to be worked out and efforts had to be made to get a reliable schedule in place. Scheduling an airline that would be willing to go all the way to Adak was a significant task. Currently, airline travel is only possible on Thursdays and Sundays from Anchorage to Adak, with the help of Alaska Airlines.

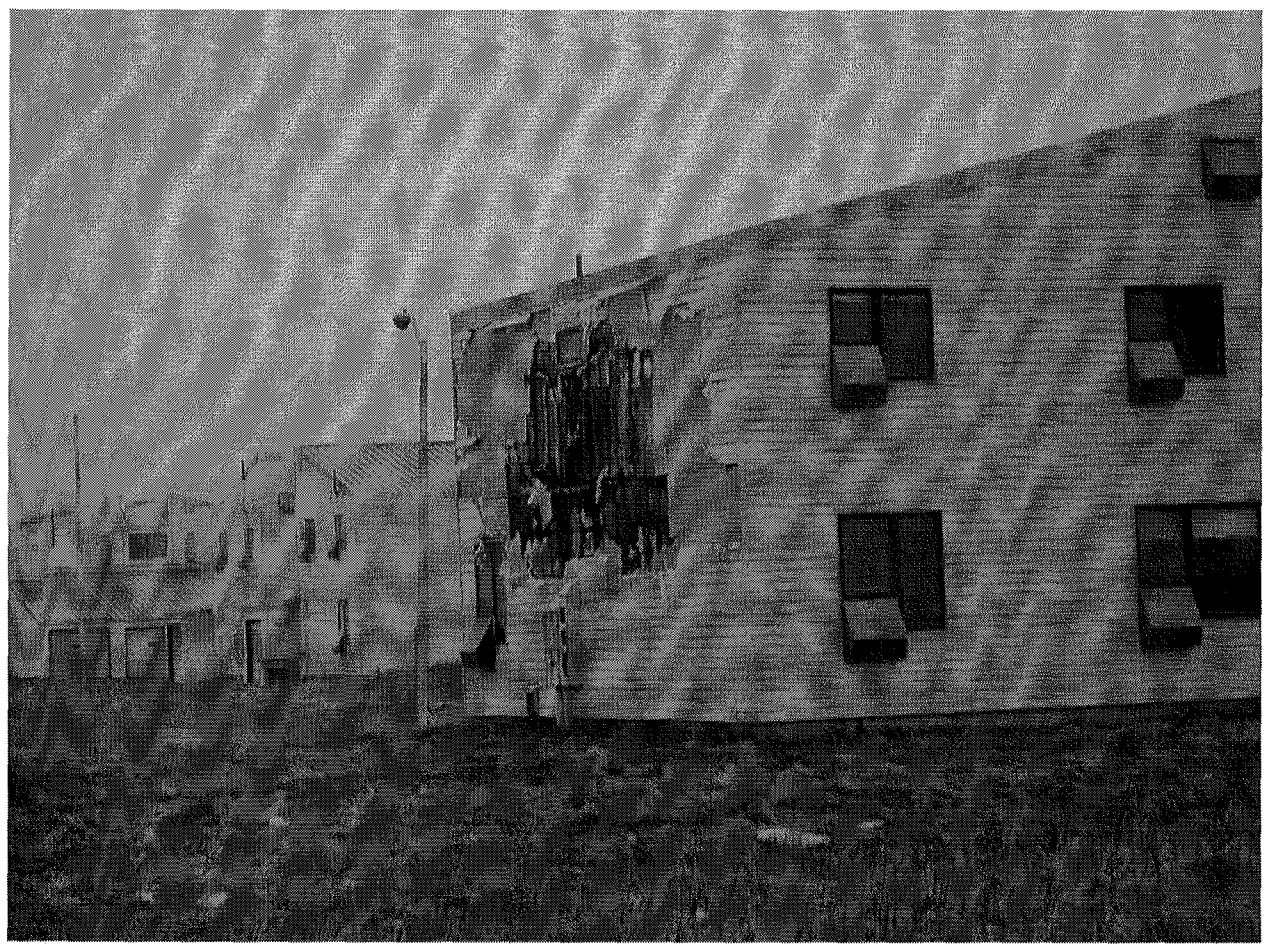
Construction included such challenging tasks as obtaining local sand and gravel for repairs of road crossings and obtaining and using equipment for washing the sand and gravel so that it would perform properly in the concrete. Due to the remoteness of Adak Island, a ready source of these items could not be called upon to truck material to the sites.

Building the fiber optic network included waiting for the manufacturer to build file jumpers, making sure hazmat regulations were followed while shipping batteries, and coordinating construction crews' arrival along with the housing needed to accommodate them.

Ongoing power supply and infrastructure has been a significant issue while the TAC and the Adak city government worked to have reliable power. At one point, the residents were cautioned to leave the island due to the prospects of possible power shutdowns. Meanwhile, Adak Tel brought in a generator to supply power for phones and the company used this in their central office.

Today, with the USF support provided, and because of RUS loans, the telecommunications on the island provided by AEE include facilities for wireline, which includes voice, broadband, and television, as well as wireless. This system provides significant parts of the infrastructure needed for the community to survive and for the economy to grow, consistent with the vision of The Aleut Corporation.

This photo shows the damage that can result from the ongoing winds. Notice the protective coverings over the windows that are needed to allow fresh air in and keep the rain and wind out.



Example number two: